IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7913 of 2004
with
SPECIAL CIVIL APPLICATION No 5681 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI VALLABHBHAI PATEL

Versus

DISTRICT COLLECTOR

Appearance:

1. Special Civil Application No. 7913 of 2004
MR KK TRIVEDI for Petitioner Nos. 1-5
MR NAGESH SOOD, AGP for Respondent Nos. 1-2
MR UI VYAS for Respondent No. 3

2. Special Civil Application No.5681 of 2004
MR KK TRIVEDI for Petitioner Nos. 1-5
MR NAGESH SOOD, AGP for Respondent Nos. 1-2,4
MR UI VYAS for Respondent No.3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 26/07/2004

COMMON ORAL JUDGEMENT

RULE. Mr.Nagesh Sood, learned A.G.P., appears

and waives service of rule on behalf of the respondents State and Mr.U.I.Vyas learned advocate, appears and waives service of rule on behalf of respondent No.3. With the consent of the parties, both these petitions are heard together and are disposed of finally by this common judgment.

2. In both these petitions, the respective petitioners have submitted an application before the Collector for converting the land from new tenure to old tenure under the provisions of the Bombay Tenancy Act. The said application came to be rejected by the Collector, Surat by order dated 17-04-2004 on the ground that in the Revised Development Plan the land in question was in reservation for SUDA Housing Board and, therefore, rejected the application for converting the land from new tenure to old tenure.

3. Mr.Trivedi, learned advocate appearing on behalf of the petitioners, submitted that it is true that in the existing Draft Development Plan the land in question is in reservation for SUDA Housing Board. However, in the Revised Draft Development Plan the reservation is lifted and now the land in question is in the residential zone. However, the said Revised Draft Development Plan is yet not sanctioned by the State Government and it is pending before the State Government. He has further submitted that the reason on which the application of the petitioners for converting the land from new tenure to old tenure is rejected is absolutely irrelevant. The Collector was not required to consider whether the land in question is in reservation or not. He has further submitted that the Collector could have granted the permission from converting the land new tenure to old tenure subject to the reservation and at the most converting the land from new tenure to old tenure the land may not be used by the petitioners for the purpose other than the reservation. However, on that ground the Collector could not have rejected the application of the petitioners from converting the land from new tenure to old tenure.

4. Mr.Nagesh Sood, learned AGP, has submitted that at present the land in question is in reservation for the SUDA Housing Board. He has further submitted that it is true that in the Revised Draft Development Plan the land in question is in the residential zone but still the Revised Draft Development Plan is not sanctioned by the State Government and, therefore, he has submitted that the petitioners as such should have waited till the Revised Draft Development Plan is sanctioned by the State

Government.

5. Heard the learned advocates appearing for the respective parties.

6. The petitioners have submitted an application for converting the land in question from new tenure to old tenure and to lift the restriction under the provisions of Section 43 of the Bombay Tenancy Act. There are restrictions on transfer of land purchased or sold in the provisions of Bombay Tenancy Act. If those restrictions are to be removed or lifted on certain terms and conditions and on payment of premium the land can be used as old tenure land. At that stage the authority is not required to consider whether the land is in reservation or not. By granting permission the petitioners will not be permitted to use the land for other purpose other than reservation. Therefore, the Collector could have granted the permission from converting the land from new tenure to old tenure subject to the reservation, meaning thereby that even if permission is granted then also the petitioners are not in a position to use the land for the purpose other than reservation.

7. In that view of the same, the matter is remanded back to the Collector, Surat for passing a fresh order in accordance with law and in light of the observations made by this Court hereinabove. The Collector can pass an order of granting the permission subject to the reservation under the Draft Development Plan. The said exercise is to be done within a period of 03 (three) months from the date of receipt of this order.

8. However, it is made clear that even if the petitioners are ultimately granted the permission for converting the land from new tenure to old tenure, the petitioners will not use the land in question for the purpose other than the reservation because that restriction is there under the Gujarat Town Planning Act.

9. Rule is made absolute to the aforesaid extent. No order as to costs.

10. Office is directed to place copy of this order in connected matter. Sd/-

[M.R.SHAH, J]

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'Bhavesh'